INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and rules involved	2
Statement	4
Argument	6
Conclusion	12

CITATIONS

Cases:

Berra v. *United States*, 351 U. S. 131 — 6
DiCarlo v. *United States*, 6 F. 2d 364 — 11
Malone v. *United States*, 94 F. 2d 281, certiorari denied, 304 U. S. 562 — 11
Maxfield v. *United States*, 152 F. 2d 593 — 8
Remmer v. *United States*, 205 F. 2d 277, judgment vacated and remanded on other grounds, 347 U. S. 227 — 8
Rose v. *United States*, 128 F. 2d 622, certiorari denied, 317 U. S. 651 — 8
Singer v. *United States*, 58 F. 2d 74 — 8
Steele v. *United States*, 222 F. 2d 628 — 11
United States v. *Achilli*, 234 F. 2d 797 — 7
United States v. *American Die & Instrument Works*, 213 F. 2d 731 — 11
United States v. *Caserta*, 199 F. 2d 905 — 8
United States v. *Mangiaracina*, 10 F. R. D. 415 — 8
United States v. *Moran* (C. A. 2d), decided August 15, 1956 — 7

Statutes:

Internal Revenue Code of 1939:

Sec. 145 (b) (26 U. S. C. 1952 ed., Sec. 145 (b)) — 2, 6
Sec. 3616 (a) (26 U. S. C. 1952 ed., Sec. 3616 (a)) — 3, 6

Miscellaneous:

Federal Rules of Criminal Procedure:

Rule 30 — 3, 10
Rule 52 — 4

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 386

JOHN J. DOYLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court wrote no opinion. The opinion of the Court of Appeals (Pet. 1a–13a) affirming the judgment of the District Court is not yet reported.

JURISDICTION

The judgment of the Court of Appeals (Pet. 18a) was entered May 23, 1956. A petition for a rehearing and a motion for leave to file an additional petition for rehearing were denied on August 6, 1956. (Pet. 19a.) The petition for a writ of certiorari was filed on September 5, 1956. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether the trial court erred in imposing upon petitioner, under Section 145 (b) of the Internal Revenue Code of 1939, a sentence in excess of that which could have been imposed under Section 3616 (a) of the Code; and whether the Court of Appeals erred in refusing to remand the case to the trial court for resentencing under Section 3616 (a).

2. Whether it was an abuse of discretion for the trial court to deny petitioner's motion for a bill of particulars.

3. Whether the trial court committed reversible error in failing to instruct the jury in language requested by petitioner on the use of the Government's summaries of alleged unreported income computed on the net worth and bank deposits methods.

4. Whether the trial court committed reversible error in instructing the jury as to the weight to be given the testimony of character witnesses.

5. Whether the prosecutors' conduct deprived petitioner of a fair trial.

STATUTES AND RULES INVOLVED

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any man-

ner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1952 ed., Sec. 145 (b).)

SEC. 3616. PENALTIES.

Whenever any person—

(a) *False returns.* Delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made; or

* * * * *

(26 U. S. C. 1952 ed., Sec. 3616 (a).)

Federal Rules of Criminal Procedure:

RULE 30. *Instructions.*

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly

the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

RULE 52. *Harmless Error and Plain Error.*

* * * * *

(b) *Plain Error.* Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

STATEMENT

On August 30, 1954, a two-count indictment was filed against petitioner in the United States District Court for the Southern District of Indiana, charging him with wilful attempts to evade his income taxes for the years 1947 and 1948, in violation of Section 145 (b), Internal Revenue Code of 1939, by filing false and fraudulent income tax returns. The amounts of net income and the taxes due thereon, as reported in the returns and corrected, were alleged to be as follows (R. 2–3):

	Reported		Corrected	
	Income	Tax	Income	Tax
Count I (1947)	$70,471.02	$38,770.01	$97,171.38	$59,812.73
Count II (1948)	119,300.05	58,317.24	145,654.30	76,410.86

On September 23, 1954, petitioner filed a motion for a bill of particulars requesting the method by which income had been determined, deductions and credits allowed, the source or sources of the income, and the method by which income had been reconstructed. (R. 6–7). After oral argument, the motion was denied on October 27, 1954. (R. 10.)

After a jury trial petitioner was found guilty on all counts. On April 15, 1955, the court imposed with respect to Count I a fine of $10,000 and with respect to each count concurrent prison sentences of two years. (R. 952–953.) The Court of Appeals affirmed (Pet. 1a–13a) and denied a petition for rehearing and a motion for leave to file an additional petition for rehearing (Pet. 19a).

The evidence to support the verdict, the sufficiency of which is not challenged, may be summarized as follows:

During the prosecution years petitioner's reported income arose from two bookmaking partnerships and a partnership operating and maintaining slot machines. (R. 26–38.) The Government's case was established by an exhaustive analysis of petitioner's bank deposits and disbursements, corroborated by proof of annual net worth increases and expenditures in excess of his reported income. The results reached by these two methods were within a few hundred dollars of each other with respect to each of the two years, and showed that petitioner had income substantially in the amounts alleged in the indictment. (R. 451–490, 523–565.) Petitioner's defense at the trial was that he had at least $50,000 in cash on hand as of the beginning of the first prosecution year, 1947. (R. 754, 811–812.) The evidence showed that neither petitioner nor any member of his family had ever received any gifts or inheritances; that, between 1920 (when he was first gainfully employed) and 1941, petitioner had paid no income tax and was usually employed as a clerk or salesman; that after a brief period of unemployment in 1943 he became a horse-

race bookmaker on a small scale, branching out in 1945 and 1946 into larger operations; that he reported nominal income for the years 1942–1944 and substantial income for 1945 and 1946; that his visible net worth as of the beginning of 1945 was $1,007.50 and he had "nothing to speak of" prior to 1945 or 1946; and that his visible net worth as of the beginning of 1947 was within $38.86 of the estimated net worth he could have accumulated on the basis of his income tax return filing history. (R. 436, 534, 556, 559, 720, 759–763, 771, 774–775, 776–777, 807.)

ARGUMENT

1. Petitioner's first contention (Pet. 15, 17–18) is that the sentence imposed upon him is illegal in that it exceeds the maximum prescribed by Section 3616 (a) of the Internal Revenue Code of 1939. He argues that the indictment, although purporting to charge offenses under Section 145 (b), the Code provision making income tax evasion a felony (*supra*, pp. 2–3), in fact charged only the misdemeanor proscribed by Section 3616 (a) (*supra*, p. 3). He therefore "seeks to have the validity of the sentence determined by this Court" (Pet. 15) or, in the alternative, to have the case remanded to the District Court in order that he might move to correct his sentence (Pet. 18). The short answer to these arguments is that the point has not been preserved. It was first raised in the Court of Appeals in a motion for leave to file a second petition for rehearing, and that motion was denied. (Pet. 19a.) In *Berra* v. *United States*, 351 U. S. 131, where the defendant had called

Section 3616 (a) to the attention of the trial court by requesting an instruction to the jury, this Court (Justices Black and Douglas dissenting) found it unnecessary to decide whether the sentence was excessive. *A fortiori* the question is not presented by this record, on which it was not raised in the District Court in any manner. *United States* v. *Achilli*, 234 F. 2d 797, 808–810 (C. A. 7th) (Pet. 14a–17a).[1]

2. The contention (Pet. 18–20) that the trial court erred in denying petitioner's motion for a bill of particulars (R. 6–10) rests mainly on the statement (Pet. 19) that "the first notice that the petitioner received of the circumstantial methods to be relied upon by the prosecutors was in the opening statement * * *." We think it is clear that the defense knew long before the trial that the Government would have to rely upon reconstruction of income by circumstantial evidence, i. e., proof of excessive net worth or bank deposits, or both. The petitioner's books were in agreement with the false returns, as he knew. (R. 9.) The partnership books agreed with the partnership returns. (R. 585–586.) The underlying records of the three partnerships were burned by petitioner early in 1951, shortly before the investigation began. (R. 319, 785, 799–800.) In these circumstances it was apparent that the Government could not establish unreported income by direct proof. Moreover, the defense knew in 1951 that the Gov-

[1] We note, however, that the Second Circuit did consider this question in a case in which it was not raised in the trial court. *United States* v. *Moran*, decided August 15, 1956, pending on petition for certiorari, No. 417, this Term.

ernment had prepared a summary of petitioner's net worth (R. 598, 599) and learned long before the trial that a thorough analysis of his banking transactions had been made (R. 415–417, 426, 495, 572). The absence of prejudice is shown by petitioner's failure to move for a continuance at the trial in order to perfect his defense.[2]

Even if petitioner had not been as fully informed of the Government's case as he was, the denial of his motion would not constitute prejudicial error. *Remmer* v. *United States,* 205 F. 2d 277, 281–282 (C. A. 9th), judgment vacated and remanded on other grounds, 347 U. S. 227; *Rose* v. *United States,* 128 F. 2d 622, 624–625 (C. A. 10th), certiorari denied, 317 U. S. 651; *Maxfield* v. *United States,* 152 F. 2d 593, 596 (C. A. 9th); *United States* v. *Mangiaracina,* 10 F. R. D. 415 (W. D. Mo.) and cases cited. There is no conflict between the decision below and the case of *Singer* v. *United States,* 58 F. 2d 74 (C. A. 3d). That case turned on its own peculiar facts (see *Rose* v. *United States, supra,* pp. 624–625) and its authority in the Third Circuit has recently been severely limited by *United States* v. *Caserta,* 199 F. 2d 905, 910 (C. A. 3d).

[2] The defense was simply that petitioner had at least $50,000 cash on hand at the beginning of the prosecution years, which would have been just about enough to account for the unreported income. (*Supra,* pp. 5–6.) If this were true there would be no need for the defense to delve into the details of the Government's reconstruction. The real issue would be the adequacy of the Government's proof that the starting point net worth had been established with reasonable accuracy. Of course it is not the function of a bill of particulars to furnish such details of the Government's evidence.

3. There is plainly no merit in the contention (Pet. 20–21) that the trial court erred in submitting the Government's summaries of unreported income to the jury without proper instructions. The instruction requested by petitioner (R. 939) would have told the jury that even if they were "satisfied with the amount the Government has attempted to establish as the net worth of the defendant, it does not automatically follow that the defendant is guilty * * *" for the Government "still has the burden of proving all the other elements of the offense charged beyond all reasonable doubt." We think the instructions actually given by the court were more favorable to petitioner than the requested instruction. The jury was carefully and fully charged that they were the sole judges of the facts and the weight to be given the testimony and exhibits (R. 918); as to the weight to be given the testimony of expert witnesses (R. 907); as to the nature of the net worth and bank deposits methods of proving income and the pitfalls inherent in those methods (R. 908–910, 911); and as to the crucial importance of the element of wilfulness (R. 911). Moreover, defense counsel stated that he had "no objection to the charge of the Court" except for the failure to give many of the instructions tendered by him. (R. 925, 929–945.)

4. Petitioner's fourth point (Pet. 21–25) is that the trial court committed reversible error in charging the jury as follows (R. 920–921):

> Testimony has been introduced by defendant to show that he was and is a man of good character for honesty, integrity, truth and

veracity and the defendant's being a law-abiding citizen. This is proof admissible not for the purpose of showing that he did not commit the offense or offenses with which he is charged, but to show the improbability that he would commit such an offense and in connection with all the other evidence introduced, should be considered by you in determining the weight to be given defendant's testimony and the probability of his guilt or innocence.

In determining as to the guilt or innocence of the defendant, you should take into account the testimony in relation to his character for honesty, integrity, truth and veracity and the defendant's being a law-abiding citizen; and you should give to such testimony such weight as you deem proper. And if you find that defendant had a good character, then this when considered in connection with other evidence in the case, may alone create a reasonable doubt as to guilt, although without it, the other evidence would be convincing. But if, from all the evidence before you, you are satisfied beyond a reasonable doubt, as defined in these instructions, that the defendant is guilty, then his previous good character, if shown, can not justify, excuse, palliate or mitigate the offense, and you can not acquit him merely because you may believe he has been a person of good repute.

Petitioner's main complaint is that the court should have used the word "reputation" rather than "character". We submit that this point, which was expressly waived at the trial (R. 852, 925), is frivolous. Rule 30, Federal Rules of Criminal Procedure. (*Supra,* pp. 3–4.)

5. Petitioner's final contention (Pet. 25–33) is that he was deprived of a fair trial by the prosecutors' introduction of irrelevant and prejudicial matters. The instances cited fall into two categories: (*a*) statements made by the two prosecutors during their summations to the jury, and (*b*) questions put to witnesses by the prosecutors which petitioner claims to have been designed to prejudice the jury.

(*a*) Since petitioner made no objection whatsoever to either of the summations, the point has not been preserved. Nevertheless, the Court of Appeals reviewed the contentions and concluded that "there is nothing [in the arguments] of prejudicial character". The record amply justifies that conclusion. See *Malone* v. *United States*, 94 F. 2d 281, 288 (C. A. 7th), certiorari denied, 304 U. S. 562; *DiCarlo* v. *United States*, 6 F. 2d 364, 368 (C. A. 2d).[3]

(*b*) With respect to the eight instances in which allegedly prejudicial questions were put to witnesses, it should be noted that these have been gleaned from the record of a three-weeks trial. With one exception,[4] defense objections to these questions were sus-

[3] We find no similarity between the facts of this case and those involved in the cases relied upon by petitioner (Pet. 16, 33): *United States* v. *American Die & Instrument Works*, 213 F. 2d 731 (C. A. 3); *Steele* v. *United States*, 222 F. 2d 628, 631 (C. A. 5).

[4] The exception involved a question put to the accountant who had prepared the income tax returns in question, who testified that at the time of their preparation he was assistant division chief in the Gary, Indiana, office of the Bureau of Internal Revenue. (R. 497–498.) On direct examination the Government was permitted to bring out, over the defense objection of irrelevance, that the witness had been suspended by the Bureau in 1951. (R. 502.)

tained by the trial judge. We submit that these isolated instances could not possibly have resulted in prejudice.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
RICHARD B. BUHRMAN,
RONALD C. METEIVER,
Attorneys.

OCTOBER 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956

Office - Supreme Court
FILED
OCT 16 195
JOHN T. FEY, C

No. 386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

JOHN J. DOYLE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITIONER'S REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION TO PETITION FOR CERTIORARI.

MAURICE J. WALSH,
105 West Adams Street,
Chicago 3, Illinois,
Attorney for Petitioner.

The Scheffer Press, Inc.—ANdover 3-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 386

JOHN J. DOYLE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

---

PETITIONER'S REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION TO PETITION FOR CERTIORARI.

OPINIONS BELOW.

The District Court wrote no opinion. The opinion of the Court of Appeals for the Seventh Circuit (Pet. 1a-13a) affirming the judgment of the District Court has been reported as 234 F. 2d 788.

REPLY TO ARGUMENT IN GOVERNMENT'S BRIEF.

The petitioner deems it appropriate to reply briefly to some misconceptions of the questions presented, as stated in the argument in the Brief of the United States in Opposition to the grant of Certiorari.

1. The petitioner has requested this Court to accept this case for review, in part, because he "seeks to have the validity of the sentence determined by this Court" (Pet. 15), or in the alternative to have the case remanded to the District Court so that it may pass upon a motion for correction of his sentence under Rule 35 of the Federal Rules of Criminal Procedure.

The Government, at page 6 of its Brief, states that the short answer to these arguments is that the point has not been preserved. It is true that the first attempt to secure adjudication of the validity of the sentence was made during the pendency of the Petition for Rehearing in the Court of Appeals below. The petitioner's contention is based upon the decision of this Court in *Berra* v. *United States*, 351 U.S. 131. In that case this Court indicated by careful language that no challenge had been made at any time against the sentence in that case. Apparently that also included the period of pendency in the Supreme Court.

In the case at bar, the Court of Appeals below stated "We can only conclude that the majority opinion in Berra inherently impels a determination that the question before us does not reflect plain error" (Pet. 16a).

It is respectfully urged that the petitioner finds it difficult to conceive of a more manifest error involving a miscarriage of justice, than the infliction of a sentence to imprisonment and to payment of fines which are not authorized by law.

No more fundamental constitutional right exists than the right to be free of the deprivation of "life, liberty or property, without due process of law". (Amendment V, Constitution of the United States). Implicit in an excessive sentence is a usurpation of the legislative powers of Congress by the judiciary.

It is respectfully submitted that this point deserves the attention of this Court by acceptance for review or other appropriate action, as a matter of plain error affecting substantial rights. (Rule 52b, Federal Rules of Criminal Procedure).

2. In response to the Government's statement at pages 7 and 8 of its Brief that the "defense" know in 1951 that the Government had prepared a "summary of petitioner's net worth (R. 598, 599) and learned long before the trial that a thorough analysis of his banking transactions had been made (R. 415-417, 426, 495, 572)", it is submitted that the references to the Record do not sustain the Government's contention. At pages 598 and 599 of the Record, there is a described request by Agent Schreiber for submission of a net worth statement by the petitioner, but there is no statement to the petitioner that Schreiber had available any more than some "figures". The Record at pages 415-417, 426, 495, and 572, indicate no more than that Agent Schreiber talked to the petitioner many times during his investigation about several specific transactions, but there is nothing on those pages of the Record which justifies the statement that the "defense" was informed concerning the circumstantial methods of proof, that is, the bank deposit and net worth and expenditure methods of circumstantial proof. Certainly these questions about isolated transactions, and requests for a net worth statement would not permit preparation by the petitioner to meet the methods of proof introduced upon the trial. It is

difficult to comprehend the reason for the Government's firm opposition to a grant of a bill of particulars, if it did not believe that a bill of particulars might have afforded the accused assistance in the preparation of his defense, and this firm opposition would have been a useless and perilous gesture by the Government had it considered and believed that the defendant was informed of the nature of the matters he was to be required to meet.

It is further respectfully urged that the Federal Rules of Criminal Procedure suggest and contemplate sound exercise of liberal discretion in the issuance of bills of particulars for the purpose of affording the defendant fair notice of the nature and cause of the accusation against him, which may not be included or contained in "a plain, concise and definite written statement of the essential facts constituting the offense charged." It is clear that an indictment may conform to the foregoing quotation from Rule 7(c) of the Federal Rules of Criminal Procedure and yet not afford a defendant fair notice of the nature and cause of the accusation. Such indictment is no more than "notice pleading". Among the safeguards provided for a defendant under such circumstances by the Rules of Criminal Procedure is an application for a bill of particulars. It would appear that the Courts below, in the case at bar, have fallen into the error of considering that since the indictment met the requirement of "a plain, concise and definite written statement of the essential facts constituting the offense charged", (Rule 7(c)), therefore the grant or denial of a bill of particulars was a matter of whim, or desirability on the part of the prosecutor and trial Court rather than the considered, sound, liberal exercise of discretion affording the constitutional right of the defendant to be informed of the nature and cause of the accusation in accordance with the Sixth Amendment to the Constitu-

tion of the United States. Mere technical sufficiency of an indictment in short and streamlined form should not support denial of a request for a bill of particulars, but should indicate, on the contrary, the necessity therefor, in order to afford the defendant a fair trial, as required by due process of law, and the Sixth Amendment.

The elimination of the bill of particulars under the Federal Rules of Civil Procedure and the substitution therefor of "a motion for more definite statement" under Rule 12(e) of the Federal Rules of Civil Procedure, has been justified in most quarters by the existence of generous discovery procedures contained in Rules 26 to 37 of the Rules of Civil Procedure. However, in criminal cases the most effective of these discovery procedures is not available. The deposition process, for instance, is not available to the defendant in a criminal case, under all ordinary circumstances, in contrast to the aids and safeguards afforded the civil defendant under Rules 26 to 37 of the Civil Rules of Procedure. Rules 16 and 17 of the Federal Rules of Criminal Procedure are not an adequate or parallel protection for the defendant in a criminal case, denied proper particulars, where he has been charged in "plain, concise and definite" language of the statute, with no more factual detail. Of course, no discovery process remotely equal to grand jury pre-trial investigation is ever available to an accused.

A more important and fundamental reason for the grant of a bill of particulars, lies in the fact that the Sixth Amendment to the Constitution of the United States provides for the right of the accused "to be informed of the nature and cause of the accusation".

It is respectfully submitted that since it has been generally held that the statement of an offense in the language

of the statute, as in the case at bar, would constitute a sufficient indictment, only an indulgent and generous grant of particulars will afford to defendants the protection which is their right under the Sixth Amendment.

The Court is asked to hold that the denial of the bill of particulars, sought in proper and timely fashion, and completely denied in the case at bar, was specific reversible error, and thus indicate some curb upon the growing practice of denying particulars because the indictment is held to be sufficient under Rule 7(c) of the Federal Rules of Criminal Procedure. It is respectfully submitted that the denial of the bill of particulars in the case at bar and the continued refusal to disclose information necessary and pertinent to the preparation or presentation of defense was a violation of the petitioner's rights under the Sixth Amendment, as well as being contrary to the decisions cited heretofore in the Petition.

3. In its discussion at page 9 of its Brief of the third point made by the petitioner, the Government completely overlooks and fails to answer the petitioner's contention that Exhibit 103 (R. 449) and Exhibit 108 (R. 526) admitted over objection, were submitted to the jury without guarding instructions as to their use and consideration in the juryroom during deliberation upon verdict.

It is obvious that an instruction that the jury was the sole judge of the facts and weight to be given the testimony and exhibits (R. 918), is not a guarding instruction which would protect the accused from charts summarizing computations of other exhibits and containing bare figures which probably acquired an existence of their own, independent of the evidence which gave rise to them.

4. The Government, at page 10 of its Brief, in its allegation that the petitioner's main complaint against the instruction concerning evidence of prior good reputation concerned a misuse of the words "reputation" and "character", completely ignores the principal complaint concerning the instruction which is set forth at pages 22 through 25 of the Petition for Certiorari, and has made no answer to the petitioner's complaint against the error in the instruction, which vitiated and destroyed the effect of evidence establishing the petitioner's prior good reputation.

5. Petitioner relies upon his argument in the Petition for Certiorari with regard to this point, but suggests that the instances of inflammatory argument, misstatements by the prosecutor and questions designed for prejudice require a better justification than a statement that they did not prejudice the petitioner.

Respectfully submitted,

MAURICE J. WALSH,
Attorney for Petitioner.